

INSURANCE

Dave Heineman
Governor

Bruce R. Ramge
Director

A Message from the Director....



Bruce R. Ramge

State Based Systems To Be Implemented July 16, 2012

I am pleased to announce that effective July 16, 2012, the Nebraska Department of Insurance will begin using State Based Systems (SBS). With the use of SBS, the Department will take the opportunity to implement several National Association of Insurance Commissioners (NAIC) uniformity initiatives. In addition, the Department will be afforded the opportunity to streamline many of its processes.

SBS is a robust back-office software system designed with state regulation in mind. The product suite offers services for producer licensing, company licensing, consumer services, enforcement, fraud, exam tracking and revenue management. Offered as a benefit of NAIC membership, SBS includes advanced features such as document management, correspondence creation and tracking, as well as flexible reporting.

I am excited to be implementing SBS and gaining access to all of the efficiencies it offers. The wide array of reporting functions offered by SBS will benefit all involved in the business of insurance on a 24/7 basis. The online tools that will become available with the July 16 implementation of SBS include: Company Lookup, Licensee Lookup, Online Licensee Services, Online Continuing Education, Course Lookup, License Print, Education Transcript, and Report Generator.

I encourage interested parties to participate in one of the industry demo sessions that we are planning to hold in late July. Plans are being made to hold sessions in Grand Island, Omaha, and Lincoln. As dates, times, and locations get finalized, information will be posted on the Department's website at www.doi.ne.gov.

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FRAUD DIVISION

Report Violations of Insurance Fraud

One area in which companies, producers, and brokers may be lax in reporting is insurance fraud.

Section 44-393 of Nebraska revised statutes requires any person having knowledge of a violation of any insurance law to report it to the Department. Insurance companies, producers, and brokers licensed by the Department are those most likely to recognize a violation of the insurance laws. One area in which companies, producers, and brokers may be lax in reporting is insurance fraud. Section 44-393, although separate from the Insurance Fraud Act (§44-6601 et seq.), provides reporting requirements to the Department, which would include suspected insurance fraud.

The Department expects all insurance companies, producers, and brokers to be aware of statutory reporting requirements and comply with those requirements.

For example, an insurer has knowledge that a producer is binding coverage but not remitting the premium to the insurer. After investigation, the insurer terminates the producer's appointment for lack of production, or another reason, instead of reporting the misappropriation of insurer funds, which is a violation of insurance laws. By taking this approach, the insurer does not comply with the requirements of §44-393 and may, as a result, become the subject of an administrative action.

When in doubt, you should report rather than risk other penalties.

The Department expects all insurance companies, producers, and brokers to be aware of statutory reporting requirements and comply with those requirements. Neb.Rev.Stat. §44-394 states "[a]ny company or person who knowingly violates any provision of this chapter for which no penalty is provided, shall be guilty of a Class III misdemeanor." When in doubt, you should report rather than risk other penalties.

Mandatory reporting is the responsibility of the insurer and/or producer.

If you fail to bring attention to issues that should be addressed by criminal prosecution or administrative action, it perpetuates the ability for further violations with potential harm to insurers and consumers.

Any questions concerning the reporting requirement may be directed to Christine Neighbors, Deputy Director and General Counsel, at christine.neighbors@nebraska.gov or by phone at 402-471-2201.

If an insurer chooses to forward reports through a third-party, it is still the insurer's responsibility to ensure the report was received by the IFPD.

It should be noted that mandatory reporting is the responsibility of the insurer and/or producer. If an insurer chooses to forward reports through a third-party, such as the National Association of Insurance Commissioners (NAIC) or the National Insurance Crime Bureau (NICB), it is still the insurer's responsibility to ensure the report was received by the Insurance Fraud Prevention Division (IFPD). The IFPD acknowledges all referrals received by the division, even those submitted for cross-referencing.

12th Annual Insurance Fraud Conference

The Insurance Fraud Prevention Division of the Nebraska Department of Insurance will host its 12th Annual Insurance Fraud Conference on June 13, 2012, at Eugene T. Mahoney State Park located at Interstate I-80, Exit 426, near Ashland, Nebraska. The target audience for this conference is insurance company special investigation units, and claims and underwriting personnel. Limited seating is available. A conference brochure/registration form can be obtained from Connie Drake at connie.drake@nebraska.gov. The agenda is as follows:

Time	Topic	Speaker
7:30–8:15 a.m.	Continental Breakfast	
8:15–8:30 a.m.	Welcome	Bruce R. Ramge, Director of Insurance Chuck Starr, Fraud Division Chief
8:30–9:00 a.m.	Opening Remarks Introduction of Speakers	Keri Kish, Antifraud Counsel National Association of Insurance Commissioners Chuck Starr, Fraud Division Chief
9:00–11:30 a.m.	Elements of Accident Reconstruction: Overall Analysis of the Accident Scene	Marlan Hohnstein, Chris Mannel, Neal Trantham Nebraska Accident Reconstruction, LLC
Break	Speaker's Discretion	
11:30–12:30 p.m.	Lunch—Property/Casualty Attendees	
11:30–12:30 p.m.	The Hitchhiker's Guide to the DME Universe Life/Health Attendees	Tom Spain, CFE, RRT Manager, Special Investigations Unit Blue Cross and Blue Shield of Nebraska
12:30–1:30 p.m.	Lunch—Life/Health Attendees	
12:30–1:30 p.m.	The Hitchhiker's Guide to the DME Universe Property/Casualty Attendees	Tom Spain, CFE, RRT Manager, Special Investigations Unit Blue Cross and Blue Shield of Nebraska
1:30–4:00 p.m.	Impact of Digital Evidence	Mark Lanterman, Chief Technology Officer Computer Forensic Services
Break	Speaker's Discretion	
4:00 p.m.	Closing Remarks	Chuck Starr, Fraud Division Chief

PRODUCER LICENSING DIVISION

SBS Implementation Will Create Changes for Providers and Licensees

Several changes for providers and licensees will take place with the implementation of State Based Systems (SBS). Following is a synopsis of the changes that will take place when the Department goes live with SBS on July 16:

Changes for Providers

New to education providers in Nebraska will be the requirement that providers report the course completions for their classes to the Nebraska Department of Insurance. Starting on July 16, this new requirement must be completed through the use of the SBS tool, Online Continuing Education (OCE). Following is a list of the functionality available through OCE:

- Submit course applications
- Submit course offerings (or schedules)
- Upload course rosters
- View detailed provider information
- Submit instructor applications
- Upload attachments to pending courses

All of this and more will be covered during two demo sessions via free webinars on June 14 and June 18. If interested, visit <http://www.zoomerang.com/Survey/WEB22ETF58PX5U> to complete an online registration or to obtain additional details.

Please also note that course rosters submitted through SBS will incur a \$1.00 fee per credit hour, per student.

Prior to the SBS implementation, Nebraska tracked multiple “sessions” for provider courses. In SBS, these “sessions” will be treated as different courses and applicable fees will apply. However, if a provider wishes to offer multiple course schedules for each course they may do so at no extra cost.

Changes for Licensees

- **Individual License Numbers.** All individuals will be getting new license numbers. Starting on July 16, the Nebraska license numbers for individuals will be the same as the National Producer Numbers (NPNs) for those individuals. To look up the new license number, use the Licensee Lookup tool that will become available with the implementation of SBS on July 16.

- **Business Entity License Numbers.** All business entities will be receiving new license numbers as of July 16, at which time the new license number may be looked up using the Licensee Lookup tool.
- **Company License Numbers.** All companies will be assigned new company numbers based on the SBS system. Beginning on July 16, companies may view these new numbers using the Company Lookup tool.
- **License Printing.** Licensees will be able to obtain a PDF license via the SBS License Print or Online Licensee Services (OLS). Every time a major change happens to the licensee's record, a free license print will be available.
- **Education Transcripts.** New to licensees in Nebraska will be the ability to view your CE transcripts in real time. The responsibility of reporting course completions will be handled by the education providers; therefore, licensees will no longer submit their CE data themselves.

For detailed information regarding these upcoming changes, please visit the Department's website at www.doi.ne.gov.

Annual Renewal Billing Statements

The Department has mailed the annual renewal billing statements that reflect the producers' appointments renewed on behalf of a company for the 2012-2013-license year. Please note that names may not be added or deleted from the billing statement.

Appointments and appointment terminations may be processed online through the National Insurance Producer Registry (NIPR) at www.nipr.com, or by submitting the NAIC Uniform Appointment/Termination form located at www.doi.ne.gov/license/p_appoin.pdf on the Department's website.

Cancellation of producers' appointment forms received in the Department after April 15, 2012 were automatically renewed and have been processed with a cancellation effective date of May 1, 2012. Both the renewal statement and the cancellation fees listed on your May or June monthly invoice must be paid. Remit the total amount due by the date indicated and include a copy of the first page of the invoice with your check. Appointment renewals are not available for processing online.

It is important to note that any other money that may be due the Department should be remitted by a separate check.

Questions concerning the annual renewal statement may be directed to the Producer Licensing Division at 402-471-4913.

PROPERTY & CASUALTY DIVISION

Changing Coverage Forms

Please make sure when coverage forms are changed that arrangements are also made for the appropriate notification to the insured.

Section 44-531 of the Nebraska statutes requires that if an insurer reduces, eliminates or restricts coverage, prior to renewal of the policy and other than at the request of the named insured or as required by law, the insurer must send to the named insured a notice which clearly explains the change. If the insured has agreed in advance to receive in an electronic version, that may be used as well. If the named insured does not receive the notice, the change will not be considered part of the policy. Please make sure when coverage forms are changed that arrangements are also made for the appropriate notification to the insured.

Subjective Scheduled Rating Programs

A worksheet showing how/why a debit or credit is being allowed is something that may be required to be completed by individual carriers, but it is not a requirement of the Department of Insurance.

Several years ago, Nebraska did away with all subjective scheduled rating programs through Neb.Rev.Stat. §44-7512. At that same time, Neb.Rev.Stat. §44-7509 was put into place for most commercial lines which allows a +/- 40% rating flexibility. Since this is allowed by statute, it does not need to be filed with us. This is very similar to the old IRPM program that many carriers have had in place over the years. The difference is that one does not have to complete a worksheet showing how/why the debit or credit is being allowed. This is something that may be required by the individual carriers, but it is not a requirement of the Department of Insurance.

File and Use

Please note that since actuarial support is required for rate filings, a filing is not considered to be complete until that support has been submitted.

We have a fairly liberal Rate and Form Act in Nebraska that has evolved over several years. Most lines of insurance are now submitted and reviewed on a File and Use basis. This means that once a filing has been received by the Department, the company can begin using it. To determine if the line to be submitted is considered on a File and Use basis, please refer to Neb.Rev.Stat. §§44-7506 (rates) and 44-7508.01 (forms). Please note that actuarial support is required for rate filings. A filing is not considered to be complete until that support has been submitted.

CONSUMER AFFAIRS DIVISION

A growing number of complaints reveal that many marketing organizations use questionable tactics to acquire the leads sold to insurance producers.

Insurance companies and producers are reminded that lead cards are considered advertisements, and are subject to the same regulations as any other advertisement for insurance.

If a lead card or internet site provides false, misleading or deceptive information, the company or producer purchasing the leads will be subject to administrative action.

Misleading Advertisements Circulated by Third-Party Marketing Entities

A quick search of the internet reveals that there is no shortage of marketing organizations promising to provide high quality leads to insurance producers. A growing number of complaints reveal that many of these organizations use questionable tactics to acquire the leads sold to insurance producers.

For example, a lead card promising “free information” about Medicare or the Nebraska Long-Term Care Partnership is misleading, if it is worded in such a manner as to suggest an affiliation with the Federal or State Government. A lead card designed to generate interest in annuities is deceptive, if it suggests the recipient owns an annuity that has reached the end of its surrender period.

Insurance companies and producers are reminded that lead cards are considered advertisements, and are subject to the same regulations as any other advertisement for insurance.

Lead cards are often distributed and mailed by unlicensed third-party marketing entities, but the companies and producers on whose behalf the cards are distributed are responsible for their content. Like all advertisements for insurance, lead cards should be truthful and accurate. The card should clearly disclose, with equal prominence, that an insurance agent will call on the recipient who responds.

Insurance advertising standards also apply to internet-generated leads. If a lead card or internet site provides false, misleading or deceptive information, the company or producer purchasing the leads will be subject to administrative action.

Please contact the Department’s Consumer Affairs Division staff if you have questions or concerns regarding misleading insurance advertisements.

LEGAL DIVISION

Case Summaries

Smalley v. Nebraska Dept. of Health & Human Servs. 283 Neb. 544 (2012)

Smalley was injured after he was hit by a truck. As a result, he filed a personal injury lawsuit against the driver of the truck and the company who owned the truck. While he was in the hospital, it was determined that he was eligible for Medicaid. However, the Nebraska Department of Health and Human Services (“DHHS”) initially refused to pay the bill on the basis that Smalley might have third-party resources available, such as the liability insurance of the parties responsible for his injuries. At the time DHHS denied payment, Smalley’s lawsuit had been unresolved. Eventually, DHHS paid for Smalley’s medical bills in return for a promise from Smalley to reimburse DHHS from the settlement proceeds from the lawsuit. (Notably, at trial, Smalley’s counsel admitted to having the intention to not fulfill this promise.) Subsequently, Smalley joined DHHS to the lawsuit claiming they were not entitled to the full reimbursement because it was contrary to federal law. The district court held that DHHS’s right to reimbursement was limited by *Arkansas DHHS v. Ahlborn*, 547 U.S. 268 (2006), in which the U.S. Supreme Court held that a state Medicaid program is entitled to reimbursement from only that part of a personal injury settlement that represents payment for medical care expenses. Using the calculation the court used in *Ahlborn*, the district court reduced the reimbursement payment from \$130,000 to \$17,420. DHHS appealed arguing that they were fraudulently induced into the agreement.

On appeal, the Nebraska Supreme Court overturned the finding of the district court. Smalley had argued that DHHS was legally obligated to pay his medical expenses and therefore could not have been induced to do so by a promise of full reimbursement. The court noted, however, that under Nebraska’s Medical Assistance Act, any application for Medicaid benefits must include an assignment to DHHS of any rights to receive or pursue any third party liable to pay for the costs of medical care arising out of the injury which otherwise would be covered by Medicaid. Further, DHHS regulations provide that DHHS does not pay a Medicaid claim if there is any possibility that a third party could be liable for the amounts due. Third parties include private health insurance, casualty insurance, and liable third parties who are not insurance carriers, but may carry liability insurance. As such, the court determined that DHHS had no legal obligation to pay for the medical bills and therefore could have detrimentally relied on Smalley’s promise of full reimbursement.

With regard to the reduction in the reimbursement payment, the Nebraska Supreme Court held that formula used in the *Ahlborn* case was limited to the facts of that case and that *Ahlborn* did not hold that a state Medicaid administrator was never entitled to full reimbursement. As such, DHHS was entitled to the full amount because the district court should have looked at the agreement between Smalley and DHHS which stated that Smalley would reimburse DHHS for the full amount.

Actions Taken Against Producers (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1939 Matthew Spawn Columbus, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (h). Violated any insurance law; used fraudulent, coercive, or dishonest practices.	Consent Order \$1,000 admin. fine 2/23/2012
NPN - 8424221		
A-1940 Frederick Pollack Lincoln, NE	Violated <u>Neb.Rev.Stat.</u> §§44-4054(8) and 44-4059(1)(b). Failed to change business address with the Department within 30 days; violated any insurance law.	Order \$500 admin. fine; Producer license suspended 3/13/2012
NPN - 3375564		

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1937 Washington National Insurance Company Indiana	Violated <u>Neb.Rev.Stat.</u> §§44-710.03(6), 44-1540 (3), (4), (7), (8), (13) & (14), and NAC Chapter 61 §§008.02 & 008.03. Failed to meet claim form requirements; violated the Unfair Insurance Claims Settlement Practices Act; violated the Unfair Life, Sickness and Accident Claims Settlement Practices Rule.	Consent Order \$12,500 admin. fine 3/23/2012
C-1939 First Sealord Surety, Inc. Pennsylvania	Company determined to be in hazardous financial condition due to a decline in surplus of fifty percent or greater.	Order Certificate of authority revoked 2/7/2012

LIFE & HEALTH DIVISION

Filing Guidance For MIB, Inc. Authorization Forms

MIB member companies will be required to add language to all authorization forms beginning January 1, 2013.

The Medical Information Bureau (MIB, Inc.) has issued a requirement for its member companies to amend their authorization forms to add the following language:

“I authorize [Company Name] or its reinsurer to make a brief report of my personal [protected] health information to MIB, Inc. [or MIB, or Medical Information Bureau]”. This language must be added to all authorization forms beginning January 1, 2013.

*Any form revised **solely** to comply with the language in the MIB, Inc. requirement is not required to be submitted to the Department for review and approval.*

The Nebraska Department of Insurance (NDOI) has determined that any form revised **solely** to comply with the language in the MIB, Inc. requirement is not required to be submitted to the Department for review and approval. NDOI will review the notices on a going-forward basis upon each new revision to the forms to ensure that the required language has been incorporated accordingly.

Any questions regarding this requirement should be directed to the Life and Health Administrator at (402) 471-2201.

EXAMINATION DIVISION

Financial Examinations Completed During First Quarter, 2012

Employers Mutual Acceptance Company
Medico Insurance Company
Republican Valley Mutual Protective Association

Financial examination reports become public documents once they have been placed on official file by the Department. The most current report of financial examination can now be found on the Department's website at www.doi.ne.gov. Copies can be obtained from the Department at a cost of \$.50 per page

